

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE MIGUEL RIOS,

Plaintiff,

v.

ORTIZ,

Defendant.

Case No. 1:23-cv-01595-HBK (PC)

ORDER DISREGARDING PLAINTIFF'S
REQUEST FOR CLERK'S DEFAULT

(Doc. No. 14)

CLERK TO PROVIDE CONSENT/DECLINE
OF MAGISTRATE JUDGE JURISDICTION
FORM TO PARTIES

OCTOBER 18, 2024 DEADLINE

Plaintiff Jose Miguel Rios, a pretrial detainee in the Fresno County Jail proceeds pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. (Doc. No. 1, 4). On August 28, 2024, Plaintiff requested the Clerk to enter a default against Defendant Ortiz, whom Plaintiff claims failed to timely respond to his Complaint. (*Id.* at1).

Entry of default by the Clerk of Court is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that failure is shown by affidavit or otherwise. *See* Fed. R. Civ. P. 55(a). The entry of default by the Clerk is a prerequisite for an entry of judgment upon that default. Fed. R. Civ. P. 55(b). No default was entered by the Clerk in this

case. *See* docket.

The Clerk properly withheld entry of default. Defendant Ortiz has not failed to timely file a response to Plaintiff's Complaint. On July 19, 2024, Defendant Ortiz agreed to waive service of summons. (Doc. No. 13). Consequently, Defendant Ortiz' response to the Complaint was not due until September 19, 2024. *See* Fed. R. Civ. P. 4(d)(3). On September 16, 2024, Defendant Ortiz timely filed an Answer to Plaintiff's Complaint. (Doc. No. 15). Thus, the Clerk properly withheld entry of default. Fed. R. Civ. P. 55(a).

Accordingly, it is **ORDERED**:

1. Plaintiff's request for entry of clerk's default (Doc. No. 14) was properly withheld.
2. The Clerk of Court shall provide a copy of the Consent/Decline to the Jurisdiction of a Magistrate Judge form to the Parties.
3. The Parties shall make their respective elections and return the Consent/Decline to the Jurisdiction of a Magistrate Judge form **no later than October 19, 2024**.

Dated: September 19, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE